IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5887 OF 1999

Mohan Narayan Aurangabadkar .. Petitioner
V/s.
The Municipal Corpn. of City of Solapur & 3 Ors. .. Respondents.

Shri.Girish S. Godbole with Shri.T.D.Deshmukh for petitioner.

Mrs.M.P.Thakur, A.G.P. for respondent Nos.3 & 5.

Shri.Vineet B. Naik for respondent No.1 & 2.

CORAM: B.H. MARLAPALLE &
N.H. PATIL, JJ.

October 16, 2006.

ORAL JUDGMENT (PER B.H.MARLAPALLE,J.)

1. This petition filed under article 226 of the Constitution of India, impugns the power of the Commissioner of the respondent-Municipal Corporation, who initiated disciplinary proceedings against him and subsequently the order of termination of service passed on 18/11/1996 by the Commissioner as well as the dismissal of his appeal by the communication dated 13/01/1999.

2. The petitioner is born on 08/12/1946 and he came to be appointed as Maintenance Surveyor with the respondent - Municipal Corporation on 21/07/1971. Subsequently, he was promoted on different higher posts and by the General Body Resolution No.625 passed on 24/12/1987, he came to be appointed to the post of City Engineer w.e.f.01/01/1987. However, he came to be placed under suspension by the order dated 10/10/1994 passed by the respondent No.2-Commissioner. Charge-sheet was issued and the memorandum of charges was served on the petitioner vide the communication dated 15/11/1994. The departmental enquiry was completed and second show cause notice was issued to him on 09/02/1996. He approached this Court in Writ Petition No.1248 of 1996, which was rejected by the Division Bench of this Court on 13/03/1996. The Division Bench found that the departmental enquiry which was completed and based on the Enquiry Officer's report, a show cause notice was issued by the Disciplinary Authority and therefore it was not necessary to interfere at this stage and the contentions of the parties were left open to the show cause notice. In the meanwhile, the petitioner

submitted his reply to the show cause notice on 19/02/1996. The Standing Committee passed its Resolution on 14/11/1996 (Resolution No.1041) and approved the proposal of imposing the punishment of dismissal from the service against the petitioner. Finally on 18/11/1996, the Commissioner passed the dismissal order under Section 56 (2) (4) read with section 56 (1) of the Bombay Provincial Municipal Corporations Act, 1949 ("The Corporations Act" for short). An appeal was submitted under section 56 (4) of the Corporations Act to the Chairman of the Standing Committee by the petitioner and by the communication dated 31/03/1999, the petitioner was informed that his appeal was filed on the ground that the action initiated against him was in accordance with the rules and regulations. This reply implied that there was no case made out to cause interference in the punishment order and therefore the appeal was filed.

3. Mr.Godbole, the learned counsel for the petitioner raised the preliminary point of the Commissioner's power to initiate at the first step the departmental enquiry by suspending the petitioner and

subsequently to issue the dismissal order. As per him, under section 56 (1) of the Corporations Act, it is the Municipal Corporation alone who can initiate the disciplinary action as well as pass the dismissal order and the Commissioner of the Corporation could not appropriate the powers of the Corporation to himself even though the Standing Committee had approved the proposed punishment of dismissal by its Resolution. Mr.Godbole emphasized that if the Corporation had not passed a resolution initiating the disciplinary action against the petitioner and subsequently pass a fresh resolution awarding the punishment of dismissal, the impugned action of the Commissioner is null and void or it is without any authority and therefore be set aside. In the alternative, Mr. Godbole submitted that if the action taken by the Commissioner of initiating the disciplinary action as well as awarding the punishment of dismissal is held to be legal, the appeal filed by the petitioner under section 56 (4) of the Corporations Act is required to be restored and to be heard and decided by the Corporation alone.

. On behalf of the Corporation, it has been

submitted that the scheme of Section 56 of the Corporations Act is self-explanatory and the Commissioner is within his statutory power under the proviso below sub-section (1) of section 56 of the said Act. However, it is admitted that the appeal submitted by the petitioner against the order of dismissal is required to be restored and decided afresh under sub-section (4) of section 56.

4. In respect of the challenge to the impugned order Mr. Godbole has relied upon the decision of this Court in the case of Prabhakar S.Jagdale vs. K.D.M.C. (**2004 (1) Bom.C.R.88**) as well as the decision of the Supreme Court in the case of Haryana State Cooperative Land Development Bank Ltd., vs. Haryana State Cooperative Land Development Banks Employees Union and another **[(2004) 1 SCC 574]**. Some of the observations made by the Division Bench in Jagdale's case (supra) are as under : -

> "In accordance with those Rules, either the Corporation should have initiated or instituted the proceedings or it should have

authorised other office/authority to inquire into the allegations against the petitioner. It is not even the assertion of the Corporation that the Commissioner was authority to issue charge-sheet or to hold inquiry against the petitioner. What was submitted was that as an administrative head of the Corporation, he is empowered and authorised to institute departmental proceedings against the petitioner."

"In our considered opinion, however,in the light of statutory provisions in the Civil Services Rules, which have been applied as is clear from issuance of charge-sheet itself, no action could have been taken by the Commissioner. Hence, proceedings initiated by him of issuing show cause notice and charge-sheet by respondent No.2 will have to be quashed and set aside."

5. Mr.Godbole, therefore prayed for quashing the disciplinary action as well as the dismissal order.

We do not agree with the submissions, having regard to the scheme of Section 56 of the Corporations Act which reads as under : -

"56. **Imposition of penalties on Municipal Officers and servants :** (1) A Competent Authority may subject to the provisions of this Act impose any of the penalties specified in sub-section (2) on a Municipal Officer or servant if such authority is satisfied that such officer or servant is guilty of a breach of departmental rules or discipline or of carelessness, neglect of duty or other misconduct or is incompetent:

Provided that -

(a) no Municipal Officer or servant whose monthly salary, exclusive of allowances, exceeds [one thousand] rupees shall be dismissed by the Commissioner without the previous approval of the Standing Committee.

any officer or servant whether appointed by

the Corporation or any other Competent Authority, except the Transpoort Manager being a Government Officer on deputation, may be suspended by the Commissioner pending an order of the Corporation, and when the Officer so suspended is the transport Manager or an officer appointed under section 45, such suspension with reasons therefor, shall forthwith be reported by the Commissioner to the Corporation, and such suspension shall come to an end if not confirmed by the Corporation within a period of six months from the date of such suspension :

Provided that, such suspension of an officer or servant pending inquiry into the allegations against such officer or servant shall not be deemed to be a penalty]

(c) the Commissioner may impose any of the penalties specified in clauses (a), (b), (d), [(e)and (f)] of sub-section (2) on any officer appointed by the Corporation [other than the Transport Manager if he is a Government

Officer on deputation.]

(d) the Municipal Chief Auditor and the Municipal Secretary may impose any of the penalties specified in clauses (a), (b), (c), (d) and (e) of sub-sectiion (2) on any officer or servant immediately subordinate to them subject to a right of appeal to the Standing Committee and the Standing Committee may impose any other penalty on any such officer or servant and may also impose any penalty on any other officer or servant immediately subordinate to the Municipal Chief Auditor or the Municipal Secretary;

(2) The penalties which may be imposed under this section are the following namely : -

(a) censure;

(b) withholding of increments or promotion including stoppage at an efficiency bar;

(c) reduction to a lower post or time-scale, or to a lower stage in a time-scale;

(d) fine;

(e) recovery from salary of the whole or part of any pecuniary loss caused to the Corporation;

(f) suspension;

(g) removal from municipal service which does not disqualify from future employment;

(h) dismissal from municipal service which ordinarily disqualifies from future employment;

(3) No officer or servant shall be reduced to a lower post or removed or dismissed from service under this section unless he has been given a reasonable opportunity of showing cause against such reduction, removal or

dismissal :

Provided that this sub-section shall not apply -

(a) where a person is reduced, removed or dismissed on the ground of conduct which has led to his convictionon a criminal charge; or

(b) where the Competent Authority is satisfied that, for reasons to be recorded in writing by such authority, it is not reasonably practicable to give that person an opportunity of showing cause.

(4) Subject to the provisions of clause 9d) of the proviso to sub-section (1), any Municipal Officer or servant who is reduced, removed or dismissed by any authority other than the Corporation may, within one month of the communication to him of the order of reduction, removal or dismissal, appeal to the authority immediately superior to the

authority which imposed the penalty and the Appellate Authority may, after obtaining the remarks of the authority which imposed the penalty, either confirm the order passed or substitute for it such orders as it considers just, including an order for the imposition of some lesser penalty, and effect shall forthwith be given to any order passed by the Appellate Authority which shall be conclusive :

Provided that for the purposes of this sub-section the Standing Committee shall be deemed to be the aurhority immediately superior to the Commissioner and the Corporation shall be deemed to be the authroity immediately superior to the Standing Committee.

(5) With reference to officers and servants appointed under Chapter XX the provisions of this section shall apply as if for the word "Commissioner" the words "Transport Manager" and for the wrods "Standing Committee" the

words "Transport Committee" had been substituted.

Explanation.-(1) For the purposes of this section a Competent Authority is the authority which under the provisions of this Act is competent tomake the appointment to the post held by the Municipal Officer or servant.

(2) The monthly salary which would ordinarily be admissible to a Municipal Officer or servant on the date immediately preceding the date of the order imposing a penalty shall be deemed to be his salary for the purposes of the proviso to sub-section (1).

6. In our opinion, sub-section (1) of section 56 offers the alternatives before the Corporation namely :-

a) Initiate the disciplinary action as a Competent Authority and issue the dismissal order by itself.

b) Allow the Commissioner under the proviso to exercise the delegated authority. The proviso below sub-section 1 of section 56 in clause (a) states that no municipal officer or servant whose monthly salary exclusive of allowances, exceeds Rs.1,000/- shall be dismissed by the Commissioner without the previous approval of the Standing Committee and as per clause (b), the Municipal Officer can be suspended by the Commissioner of the Corporation and such suspension with reasons therefor shall forthwith be reported by the Commissioner to the Corporation. The suspension shall come to an end if not confirmed by the Corporation within a period of six months from the date of such suspension. It is further clarified that such procedural suspension of an officer shall not be deemed to be a penalty. As per clause (c), the Commissioner may impose any of the penalties specified in clauses (a), (b), (c), (d), (e) & (f) of sub-section (2) of Section 56 on any officer appointed by the Corporation, which means that the Commissioner need not seek approval of the Standing Committee to impose any of the penalties namely, censure; withholding of increments or promotion including stoppage at an efficiency bar; reduction to a lower

post or time scale, or to a lower stage in a time scale; fine; recovery from salary of the whole or part of any pecuniary loss caused to the Corporation; suspension. Whereas the Commissioner does not have the powers to impose the punishment as set out in clauses (g) and (h) on his own, which means that the punishment of removal from municipal service which does not disqualify from future employment or dismissal from municipal service which ordinarily disqualifies from future employment cannot be imposed by the Commissioner without the previous approval of the Standing Committee and if the orders are passed under the proviso below sub-section (1), obviously the officer who has suffered the penalty has a remedy of filing an appeal under sub section (4) of Section 56 of the Corporations Act. If the order is passed by the Corporation itself as the Competent Authority, then obviously no appeal lies under sub section (4) of Section 56 of the Act. The proviso below sub section (1) is a statutory delegation of powers by the Competent Authority in favour of the Commissioner and the said power has to be exercised in the manner stated in clauses (a) (b) and (c). If the delegated power has been exercised by the Commissioner, Section

56 has also provided for a remedy of an appeal to the Corporation against the orders passed by the Commissioner under clause (a) as well as (c). We are, therefore, of the considered opinion that the order of initiating disciplinary enquiry starting from the suspension of the petitioner does not suffer from any infirmities in law as the procedure under clause (b) to the proviso below sub section (1) of Section 56 has been complied with. The suspension order as well as the dismissal order passed against the petitioner, the power exercised by the Commissioner for issuing the suspension order, initiating disciplinary enquiry and finally issuing the dismissal order is in keeping with the scheme of the proviso below sub section (1) of Section 56 of the Corporations Act and hence the petitioner's challenge on the first ground fails.

7. While confirming the power exercised by the Commissioner to be in keeping with the scheme of Section 56 of the Corporations Act, we do not find that the appeal submitted by the petitioner has been effectively dealt with. The said appeal is required to be heard and decided by the Corporation as the Competent Authority. In our view, the appeal is

required to be restored. The Corporation will have to pass a resolution in its General Body to constitute a Sub Committee consisting of 3 to 5 corporators, which may consist of Mayor, Dy.Mayor as well as the Chairman of the Standing Committee and the said Sub Committee will have to hear the petitioner on his appeal. The Committee will have to record its opinion and place it before the General Body. The General Body may accept or may reject the opinion and that will be the decision on the petitioner's appeal and this will have to be done within a specified period.

8. All the contentions raised in this petition can be re-agitated in the appeal before the Municipal Corporation which will have to be considered by them on its own merits.

9. In the circumstances, this petition succeeds partly and the impugned communication dated 31/03/1999 addressed to the petitioner is hereby set aside. The petitioner's appeal against the order of dismissal is hereby restored to the file and it is directed that the said appeal shall be heard and decided as per law and in the manners stated hereinabove by the

Corporation as expeditiously as possible and preferably before 31st March, 2007.

10. Rule made absolute in terms of these directions but without any order as to costs.

(N.H. Patil, J.) **(B.H. Marlapalle,J.)**